Factually, as pointed out by numerous parties, CMRS is licensed on an interstate basis, many networks are constructed without regard for state lines, and customers often move across state lines while calling. As stated by APC and Sprint Spectrum, "[w]ireless calls, and wireless service areas such as major trading areas and basic trading areas, simply do not respect state lines."[69] Further, according to Arch Communications, "[c]alls to paging subscribers can change from intrastate to interstate in nature depending upon the location of the mobile unit [and] all calls delivered to the [paging] provider's switching facility . . . appear identical."[70] These comments indicate that both broadband and narrowband CMRS calls and networks are inherently interstate.[71] Thus, any attempt to separate interstate from intrastate interconnected calls is likely to be tremendously expensive, if not futile.

Legally, services which "support access" to the interstate PSTN have been judicially deemed interstate services.[72] Because LEC-CMRS interconnection clearly falls into this category, it must be federally regulated. In addition, the fact that charges for interstate interconnected calls might be segregable from the charges for intrastate interconnected calls is not dispositive of the issue of federal jurisdiction. To the

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[69] Sprint Spectrum and APC Joint Comments at 44.

[70] Arch Communications Group Comments at 21.

[71] *See also* AirTouch Comments at 48-49; Omnipoint Comments at 10-12.

[72] *Public Service Commission of Maryland v. FCC*, 909 F.2d 1510, 1515 (D.C. Cir. 1990). *See also Lincoln Tel. and Tel. v. FCC*, 659 F.2d 1092, 1109 n.85 (D.C. Cir. 1981); *New York Telephone v. FCC*, 631 F.2d 1059, 1066 (2d Cir. 1980).

contrary, in *Illinois Bell Telephone Co. v. FCC*,[73] the D.C. Circuit held that although the Commission could segregate the costs associated with Centrex marketing into interstate and intrastate components, "this regulatory accounting treatment does not negate the mixed interstate-intrastate character of services like Centrex."

Finally, since the opinion in *Louisiana PSC*, Congress has amended Section 152(b) to state that "Except as provided in . . . section 332 . . . nothing in this chapter shall be construed to apply or to give the Commission jurisdiction [over intrastate telecommunications]."[74] Thus, even if other aspects of CMRS could be separated into interstate and intrastate portions, federal regulation of CMRS *rates*, including those for interconnected services, is no longer limited by the inseparability doctrine. Rather, as pointed out by Cox Enterprises, by enacting Section 332(c) and its conforming amendment to Section 152, Congress effectively removed CMRS rates from the ambit of the inseparability analysis,[75] and granted the FCC plenary jurisdiction over CMRS regulation.

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[73] 883 F.2d 104, 114 (D.C. Cir. 1989).

[74] 47 U.S.C. § 152(b).

[75] Cox Enterprises Comments at 36-38.

c. THE 1996 ACT FURTHER BOLSTERS THE FCC'S AUTHORITY TO REGULATE LEC-CMRS INTERCONNECTION

Finally, the LECs set forth three arguments as to why mandatory bill and keep for broadband LEC-CMRS interconnection violates the 1996 Act.[76] First, they point to a number of provisions of the 1996 Act that assertedly give the states, not the FCC, the primary role in implementing LEC-CLEC interconnection agreements.[77] Second, they claim that bill and keep leaves no room for negotiated agreements under Sections 251 and 252.[78] Third, they argue that bill and keep does not provide for "mutual and reciprocal recovery" under 252(d)(2)(A) because it sets the termination cost at zero.[79] These arguments misread the 1996 Act.[80]

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[76] Once again, the LECS did not explicitly attack the Commission's jurisdiction to prescribe terminating compensation for narrowband CMRS. Since such compensation involves only rates charged *by* CMRS providers, not rates charged *to* such providers, Section 332 is dispositive of the jurisdictional issue even if the Commission took a narrow reading of the 332(c) rate preemption language.

[77] This is itself a three-part argument: (1) Section 252 grants the states the exclusive jurisdiction to set just and reasonable rates for interconnection and review and approve all interconnection agreements; Bell Atlantic Comments at 5-6; Ameritech Comments at 12; BellSouth Comments at 8-10; (2) Section 251(d)(3) prohibits the FCC from preempting state regulations unless the state regulations are inconsistent with Section 251; USTA Comments at 16; BellSouth Comments at 14; and (3) Section 252(e)(5) allows the Commission to mandate interconnection only if state commissions fail to do so. USTA Comments at 15; US West Comments at 59-60.

[78] Bell Atlantic Comments at 5-6; Ameritech Comments at 12; SBC Comments at 8; Bell South Comments at 5-7; NYNEX Comments at 6-7.

[79] Bell Atlantic Comments at 5-6.

[80] Preliminarily, some CMRS providers have contended that Section 251 is intended primarily, if not exclusively, to address interconnection between LECs and CLECs. Therefore, they state that interconnection between LECs and CMRS providers (continued...)

Regarding state supremacy, the LECs' misinterpret the provisions of Section 251. In particular, Section 251(d)(1) expressly orders the Commission to "establish regulations to implement the requirements of this section."[81] One of those requirements, of course, is that incumbent LECs offer interconnection "on rates, terms and conditions that are just, reasonable, and nondiscriminatory."[82] Therefore, the FCC, not the states, is empowered to define the contours of the rates, terms and conditions of interconnection agreements between incumbent LECs and CMRS carriers.

This federal jurisdiction is further bolstered by Section 251(d)(3), which limits state interconnection regulations to those that are "consistent with the requirements of this section," and do "not substantially prevent implementation of the requirements of this section and the purposes of this part."[83] While the LECs interpret these clauses as limitations on federal jurisdiction, their plain language says otherwise. Had Congress intended to give the states a broad grant of jurisdiction in the field of interconnection, it would not have required that the state actions be consistent with federal regulations promulgated pursuant to Section 251(d)(1).

The LECs' argument that federal bill and keep regulations will eliminate all negotiations under 252(a)(1) is also demonstrably false. As proposed by the

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[80](...continued)
is governed by Section 332(c), not Section 251. Even if this is not the case, Section 251 provides for ample FCC jurisdiction over LEC-CMRS interconnection, as discussed in the text.

[81] 47 U.S.C. § 251(d)(1).

[82] 47 U.S.C. § 251(c)(2)(D).

[83] 47 U.S.C. § 251(d)(3)(B), (C).

Commission, bill and keep is limited to reciprocal compensation for the termination of LEC-CMRS traffic. Thus, upon receiving a request for interconnection from a CLEC, LECs may still enter into Section 252(a)(1) voluntary negotiations concerning the terms and conditions of interconnection, where the networks are to interconnect, and other, non-termination costs of interconnection. While bill and keep takes one item off the negotiating table with respect to CMRS providers, it hardly eviscerates the entire voluntary negotiating process, as claimed by the LECs.

Finally, the argument that bill and keep does not provide for "mutual and reciprocal recovery" under Section 252(d)(2)(A) is also wide of the mark. Preliminarily, the clause in question is immediately followed by Section 252(d)(2)(B), which explicitly endorses "bill and keep arrangements" as a form of "mutual and reciprocal recovery." Further, if traffic flows are balanced, or if it is more costly to terminate a call on a CMRS network than on a LEC network, bill and keep is a rational form of "mutual and reciprocal recovery." As discussed in more detail above, the record in this proceeding reflects that LEC-CMRS traffic flow is becoming more balanced,[84] and that it does in fact cost more to terminate landline-to-mobile calls.[85] Therefore, LECs are adequately compensated for the zero-cost termination of broadband CMRS traffic by the reciprocal zero-cost termination of LEC traffic by broadband CMRS carriers.

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[84] *See, e.g.* APC Comments at 2.

[85] AT&T Wireless Services Comments at 9-11.

III. CONCLUSION

The record confirms that current LEC-CMRS interconnection arrangements are unsatisfactory for both broadband and narrowband CMRS providers. The unfairness of these arrangements is primarily due to the fact that, as monopoly service providers, LECs bring enormous leverage to the bargaining table. To compensate for this imbalance in market power, and to promote the availability of reasonably priced interconnected services for both broadband and narrowband CMRS providers, the Commission should mandate terminating compensation schemes for these services as fully detailed in PCIA's opening comments. There is no legal, economic, or policy

barrier to doing so. The Commission's jurisdiction is broad, and the need for intervention is clear.

Respectfully submitted,

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